> As to the second ground, I will deny your motion for directed verdict. You have a third one? [4/25/01 Transcript excerpt in record below, R-2-45, p.10].

After the conclusion of Ms. Titelman's defense, she again moved for a directed acquittal. She re-urged the impossibility of a conviction on the basis of the statutory charge under Ga. Code Ann. § 16-5-45 (c)(2), since she clearly had authority to take the children out of Georgia.. She also argued to the court that the state failed to prove anything beyond a reasonable doubt. Judge Fluornoy's response was:

> And so I respect that and–but I deny it...You've got a very– and have put on a very good case to create reasonable doubt, I'll be honest with you...Reasonable doubt is for the jury. You have done Herculian efforts, done an excellent job for helping your client; and you, too, Ms. Hakes, for the State... [4/26/01Transcript excerpts in record below, R-2-45, pp.2-3].

It is clear that Judge Fluornoy never made the finding "*that the evidence is sufficient as a matter of law to support a conviction (that is, sufficient to enable a rational trier of fact to find each and every element of the guilt of the accused beyond a reasonable doubt),*" which triggers the *Monroe* presumption of probable cause. *Monroe, supra.* To the contrary, Judge

Fluornoy's statements appear to acknowledge the reasonable doubt left by the evidence presented by the State.

During the course of the litigation, Petitioner and the District Court Judge Owen Forrester argued over the threshold application of *Monroe* to the facts of this case, as well as the definitions of "fraud" and "corruption" as used in *Monroe*. On August 9, 2002, Judge Forrester dismissed Ms. Titelman's complaint upon the Respondents' Rule 12(b) motions, based on the *Monroe* rationale. On October 29, 2004, the Eleventh Circuit affirmed the dismissal of the suit in a separate appeal [No. 02-14879].

On September 17, 2002, on the Respondent's motions, Judge Forrester issued an Order granting Rule 11 sanctions against Petitioner and Michael Hirsch, his local co-counsel [1-A]. On July 29, 2003, Judge Forrester issued another Order fixing the amount of the Rule 11 sanctions at $84, 905.55, representing the cumulative attorney's fees for the various Respondents [31-A]. On July 30, 2003, a judgment was entered against Petitioner and Mr Hirsh for that total amount [49-A].

Petitioner and Mr. Hirsh appealed. On February 8, 2005, the Eleventh Circuit Court of Appeals affirmed the sanctions award against both attorneys [51-A]. On April 15, 2005, the Court of Appeals denied the petition for rehearing and rehearing en banc [63-A].

> In awarding the sanctions, Judge Forrester stated:
> Although the court is not convinced that Plaintiff forwarded a reasonable argument to distinguish the "mandatory inference" required

> by Monroe, the court finds the lack of factual support for Plaintiff's allegations, as well as its determination that Plaintiff pursued this litigation for the purpose of harassment to be sufficient bases on which to impose sanctions [22-A, fn.1].

In affirming the sanctions, the appellate court did not consider the "improper purpose issue," and only focused on the "reasonable factual or legal basis" question [58-A, fn.2].

The "factual or legal basis" issue involves a rather circular discussion below. When the trial and appellate courts speak of a "reasonable factual basis," the courts mean facts which would show fraud or corruption under *Monroe* [See Opinion, 54-A- 55-A, 57-A- 58-A; District Court Order, 19-A - 22-A]. Therefore, if *Monroe* is inapplicable to begin with because of the inadequacy of Judge Fluornoy's rulings in the criminal trial, there can be no deficient factual issue to support Rule 11 sanctions.

Thus, the only real issue regards the reasonableness of Petitioner's legal arguments regarding the significance of *Monroe* to the facts of this case. In deciding the appeal, the Court of Appeals never ruled upon the question of whether Petitioner's arguments that *Monroe* did not apply were frivolous [51-A - 62-A]. The Opinion analyzed the central question as this:

> Ducote's attempts to distinguish the case from Monroe are without merit. Monroe was decided by the Georgia Supreme Court, and thus

> controlled the district court's decision [citation omitted]. None of the cases Ducote cites for support came from the Georgia Supreme Court; nearly all are from Georgia's intermediate appellate courts. A number of his citations are to dissenting opinions. Moreover, none of the decisions actually create the exceptions to Monroe that Ducote seeks to invoke. It is clear to us, and should have been to Ducote, that Monroe compelled the dismissal of the amended complaint. The district court did not abuse its discretion in sanctioning Ducote [58-A - 59-A].

No discussion in the Opinion involved the initial argument that Judge Fluornoy's rulings did not meet the *Monroe* threshold, nor was there any discussion of what intermediate court opinions or dissents were cited and why such references were apparently improper. The Court of Appeals appears to adopt a blanket rule that it is *per se* improper to craft a legal argument from intermediate court opinions and dissents.

ARGUMENT

This Court should grant certiorari in this instance under the following Rule 10 (a) and (c) criteria: 1) The Court of Appeals has so far departed from the accepted and usual course of judicial proceedings, and has sanctioned such a departure by the District Court so as to call for an exercise of this Court's supervisory power, *i.e.* ordering Petitioner to pay Rule 11

sanctions in the amount of $84, 905.55[2] for advancing reasonable legal arguments, 2) The Court of Appeals has decided an important question of federal law that has not been, but should be settled by this Court, *i.e.* what criteria should an appellate court defer to a lower court's imposition of Rule 11 sanctions for advancing legal arguments instead of making an independent assessment of the reasonableness of the arguments, and 3) The Court of Appeals has decided an important question of federal law in a way which conflicts this Court's holding in *Cooter & Gell v. Hartmax Corporation, et al*, 496 U.S. 384, 110 S.Ct. 2447, 110 L.Ed.2d 359 (1990), *i.e.* affirming Rule 11 sanctions which were based on the District Court's erroneous view of the law.

1.The Court of Appeals erred in failing to squarely address the question of whether the legal arguments advanced in the trial court by the Petitioner, who was sanctioned $84, 905.55 under Rule 11, F.R.C.P., to distinguish *Monroe v. Sigler*, 353 S.E.2d 23 (Ga. 1987) from the instant case were reasonable or nonfrivolous.

In *Cooter & Gell v. Hartmax Corporation, et al*, 496 U.S. 384, 110 S.Ct. 2447, 110 L.Ed.2d 359 (1990), this Court

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2. These sanctions will cause Petitioner, an attorney practicing for 28 years and operating a three attorney firm, personal and professional devastation. His career includes successfully arguing *Ankenbrandt v. Richards*, 504 U.S. 689 (1992), before this Court. He is admitted to the Louisiana Bar, and the Bars of this Court, the 4th, 5th, 9th, and 11th Circuits, and federal district courts in Louisiana, Mississippi, Texas, Colorado, and Ohio.

held that a court imposing Rule 11 sanctions under an erroneous view of the applicable law abuses its discretion. Even the Eleventh Circuit has held that Rule 11 sanctions were not proper in cases where creative, but colorable legal arguments were advanced. *Davis v. Carl*, 906 F.2d 533 (11th Cir. 1990); *Anderson v. Smithfield Foods, Inc.*, 353 F.3d 912 (11th Cir. 2003). *See also Gilmore v. Shearson/American Express, Inc.*, 811 F.2d 108 (2nd Cir. 1987); *Hurd v. Ralphs Grocery Co.*, 824 F.2d 806 (9th Cir. 1987); *Mackey v. Pioneer National Bank*, 867 F.2d 520 (9th Cir. 1989); *Dura Systems v. Rothbury Invest.*, Ltd., 886 F.2d 551 (3rd Cir. 1989), *cert. den.*, 493 U.S. 1046 (1990); *Mareno v. Rowe*, 910 F.2d 1043 (2nd Cir. 1990), *cert. den.* 498 U.S. 1028 (1991); *CJC Holdings, Inc. V. Wright & Lato, Inc.*, 989 F.2d 791 (5th Cir. 1993); *Sargent v. Saunders*, 136 F.3d 349 (4th Cir. 1998). By failing to squarely address the reasonableness of Petitioner's legal arguments, the Eleventh Circuit essentially denied Petitioner any meaningful appellate review. A finding that the arguments were "without merit" [58-A] is not the same as a finding that the arguments were frivolous.

This Court should, therefore, clarify the criteria for an appellate court's assessment of the reasonableness of a legal argument. This Court should endorse the use of evolving intermediate court rulings and dissenting opinions. Otherwise, a District Court judge is granted too much power to, as in this case, impose devastating sanctions on an attorney who has simply attempted to reasonably advocate for his client. Neither the public nor the legal system is served well by creating an

atmosphere in which attorneys are afraid to do their job.

2) The Court of Appeals erred by rejecting the Petitioner's legal arguments attempting to distinguish *Monroe v. Sigler* from the instant case solely because the arguments cited Georgia intermediate appellate court decisions and dissenting opinions, none of which "actually create the exceptions to Monroe that [Petitioner] seeks to invoke."

It is axiomatic that much of the law is fluid and evolves over time, often solidifying in one way or another in response to dissenting opinions and legal scholarship. The *Notes of Advisory Committee on 1993 Amendments* to Rule 11, F.R.C.P., address the issue of legal arguments made during the course of litigation:

> Arguments for extensions, modifications, or reversals of existing law or for creation of new law do not violate subdivision (b)(2) provided they are "nonfrivolous." This establishes an objective standard, intended to eliminate any "empty-head pure heart" justification for patently frivolous arguments. However, the extent to which a litigant has researched the issues and found some support *for its theories even in minority opinions*, in law review articles, or through consultation with other attorneys should certainly be taken into account in determining whether paragraph 2 has been violated. Although arguments for a change of law are not required to be specially so

> identified, a contention that is so identified should be viewed with greater tolerance under the rule [emphasis added].

Simply because a legal argument is ultimately rejected by the court, the legal argument is not automatically deemed sanctionable. Rule 11 sanctions are not appropriate simply because counsel aggressively uses distinguishable cases in a effort to "squeeze too much" from them, since Rule 11 does not require counsel to only cite cases directly on point. *Protective Life Ins. Co.v. Dignity Viatical Settlement Partners*, L.P., 171 F.3d 52 (1st Cir. 1999).

It is crucial to examine the various holdings of the Georgia Court of Appeals cited by Petitioner in the District Court and on appeal to understand the scope of *Monroe's* holding and Petitioner's argument that *Monroe* cannot absolutely forbid every malicious prosecution suit when a motion for directed verdict is denied in the underlying criminal trial. These are the cases cited by Petitioner, which the Court of Appeals found to be insignificant.

First, under Georgia law, if a criminal defendant is acquitted, she cannot appeal the denial of the motion for directed verdict. See *Henderson v. State*, 134 Ga.App. 272, 216 S.E.2d 696 (1975); *Grant v. State*, 141 Ga.App. 272, 233 S.E.2d 249 (1977). So the *Monroe* language regarding unappealed denials of directed verdicts (353 S.E.2d 23, 25) is inapplicable when the defendant is acquitted, as happened to Ms. Titelman. Thus, under the strictest interpretation of *Monroe*

as seen below, a criminal court trial judge can forever block a subsequent tort action in even the most outrageous malicious criminal prosecution by denying a clearly meritorious motion for directed verdict of acquittal, because the prompt jury acquittal of the obviously innocent defendant precludes any review of or challenge to the erroneous motion denial. This results in a wholly illogical, unreasonable, and unfair result. As shown below, the development of the caselaw since *Monroe* recognizes this anomaly.

For example, in *Griffin v. Georgia Power Company*, 186 Ga.App. 565, 367 S.E.2d 832 (1988), the first motion for directed verdict was denied in the criminal trial, but a second one was granted. The Georgia Court of Appeals followed *Monroe* and dismissed the subsequent malicious prosecution suit. However, Presiding Judge Banke, joined by Judges Sognier, Benham, and Beasley, wrote a strong dissent, stating that *Monroe:*

> contains language which, stripped of its context, supports the majority holding in this case, I believe the majority's decision extends the holding in *Monroe v. Sigler* well beyond its intended parameters...The majority's holding in the present case not only extends the holding of *Monroe v. Sigler* well beyond its actual facts, it ignores the practical realities that often attend and influence the disposition of initial motions for directed verdicts in criminal cases..." [at 186 Ga.App.567-568].

In *Seven Hills Security Inc., v. Dillingham*, 188 Ga.App. 1, 372 S.E.2d 1 (1988), the same issue once again arose concerning conflicting directed verdict motions, and therein Judges Deen, Banke, Benham, and Beasley dissented from the dismissal of the malicious prosecution suit and urged a more realistic and fair interpretation of *Monroe*, since "*sooner or later a party will avoid civil liability despite having maliciously instigated the prosecution of another.*" [at 188 Ga.App. 3]. Presiding Judge Deen even went on to regret his joining the majority opinion in *Griffin, supra.* [at 188 Ga.App. 2].

Then, in *Atlantic Zayre, Inc. v. Meeks*, 194 Ga.App. 267, 390 S.E.2d 398 (1990), Judges Deen, Banke, and Birdsong, with no dissent, ruled that *Monroe* did not preclude a malicious prosecution suit brought by a juvenile, whose motion for directed verdict of acquittal was denied during his earlier juvenile court delinquency trial, because he was ultimately acquitted. The Georgia Court of Appeals found *Monroe* to be neither controlling nor in significant conflict with their ruling. Obviously, this decision negates any notion that *Monroe* is the impenetrable fortress the trial court holds it to be.

In *Haile v. Pittman*, 194 Ga.App. 105,189, 389 S.E.2d 564, 567-668 (1989), Judges Benham and Beasley dissented from the majority's application of *Monroe* because, as Plaintiff argues in the instant case, the denial of the motion for directed acquittal was not premised on a specific finding that the state had at that time presented sufficient evidence of guilt to convict; as the trial judge expressed some uncertainty about the case.

Then, in *Wolf Camera, Inc. v. Royter*, 253 Ga.App. 254, 558 S.E.2d 797 (2002), the Georgia Court of Appeals ignored the fact that the plaintiff's motion for directed verdict was denied in the prior criminal trial, because in the subsequent malicious prosecution trial, "*there was evidence...which could support the jury's determination that such denial was obtained through fraud committed by the defendants.*" The fraud consisted of the defendants' making false statements to the police and prosecutors, concealing important facts, and in failing to make fair, full, and complete statements affecting the prosecution. This was all done in a conspiratorial effort to have the plaintiff prosecution. *Wolf Camera* essentially vindicates the Ms. Titelman's interpretation of *Monroe* as argued during the course of this case prior to that ruling. That holding also refutes the trial court's finding that, *"On its face alone, this allegation fails to state a claim for malicious prosecution because Plaintiff cannot show that the providing of "incomplete" information to a jury satisfies the elements of malicious prosecution under Georgia law."* [Order granting dismissal of underlying suit, R-3-76, pp.4-5]. The trial court's conclusion that the provision of incomplete evidence to the police and prosecutors cannot form the basis of a malicious prosecution claim was also rejected in *Fleming v. U-Haul of Ga.*, 246 Ga.App. 681, 541 S.E.2d 75 (2000).

In *Kelly v. Serna*, 87 F.3d 1235, 1241 (11th Cir.2002), this Eleventh Circuit Court of Appeals stated in *dicta* that under *Monroe*, even a convicted plaintiff could still recover for malicious prosecution upon a showing of fraud.

Even the Eleventh Circuit Court of Appeals has utilized intermediate Georgia appellate court decisions in its own analysis of Georgia malicious prosecution law. In *Kelly v. Serna, supra*, six such opinions were cited to explain the central issue of proof of lack of probable cause. In *Blackford v. Wal-Mart Stores*, 17 F.3d 367 (11th Cir. 1994), the Eleventh Circuit certified to the Georgia Supreme Court the question of whether proof of actual guilt can defeat a malicious prosecution claim where there was no underlying trial on the criminal charges. There, the Court of Appeals found Georgia law to be "unsettled" with regard to probable cause in a malicious prosecution case, and cited three intermediate court cases. *See also Simmons v. Sonyika*, 394 F.3d 1335 (11th Cir. 2004).

Therefore, it was perfectly appropriate for Petitioner to rely on these various rulings to attempt to keep the malicious prosecution suit viable.

3) Petitioner's legal arguments attempting to distinguish *Monroe v. Sigler* from the instant case were not so unreasonable as to invoke sanctions under Rule 11, F.R.C.P.

As shown here, Petitioner did not violate Rule 11(b)(2), F.R.C.P. His legal arguments were nonfrivolous, and the sanctions should have been deemed an abuse of discretion by the Eleventh Circuit under *Cooter & Gell v. Hartmax Corporation, et al, supra.*

CONCLUSION

Wherefore, Petitioner prays that the Court grant a writ of certiorari to the Eleventh Circuit Court of Appeals, and

thereafter reverse the appellate court's decision. Thereafter, the Court is urged to reverse the District Court's judgment awarding the Rule 11 sanctions, or in the alternative, remand the case to the Eleventh Circuit Court of Appeals with specific instructions to analyze the Petitioner's legal arguments in detail to determine if they were unreasonable or frivolous, including instructions that reliance on dissenting opinions or intermediate Georgia appellate court opinions which "do not actually create exceptions" should nonetheless be considered in assessing the reasonableness of the arguments.

Respectfully submitted,

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Supreme Court, U.S.
FILED
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OFFICE OF THE CLERK

NO. _____

IN THE SUPREME COURT
OF THE UNITED STATES

Richard Ducote,
Petitioner

vs.

Andrew Titelman, Craig Chandler, John Mayoue, Pamela Gray, and Diane Woods,
Respondents

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT - CASE NO. 03-14429

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

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TABLE OF CONTENTS

ORDER (Filed 9/17/02).....1-A

ORDER (Filed 7/29/03).....31-A

JUDGMENT (Filed 7/30/03).....49-A

11th CIRCUIT COURT OF
APPEALS OPINION (Filed 2/8/05).....51-A

PER CURIAM DENIAL
OF REHEARING (4/15/05).....63-A

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

WENDY JANE TITELMAN,	:	
	:	
Plaintiff,	:	
	:	CIVIL ACTION
vs.	:	NO. 1:01-CV-:
	:	1845-JOF
	:	
ANDREW CHARLES TITELMAN	:	**Filed SEP 17 2002**
CRAIG CHANDLER, JOHN MAYOUE, PAMELA GRAY, DIANE WOODS,	:	
	:	
Defendants.	:	

ORDER

This matter is before the court on Defendants Mayoue and Gray's motion for sanctions pursuant to Rule 11 [58-1]; Defendant Chandler's motion for Rule 11 sanctions [59-1]; Defendant Titelman's motion for sanctions pursuant to Rule 11 [62-1]; Defendant Woods' motion for Rule 11 sanctions [71-1]; and Defendant Woods' motion for leave to file supplemental pleading to motion for Rule 11 sanctions [73-1].

1. Background

On July 13, 2001, Plaintiff, Wendy Jane Titelman, filed a complaint for malicious prosecution against Defendants alleging that from September 4, 2000 through April 27, 2001, Defendants caused the tortious malicious prosecution of Plaintiff in the Superior Court of Cobb County, Georgia for the felony of Interstate Interference with Custody pursuant to O.C.G.A. § 16-5-45, for which Plaintiff was acquitted by the jury on April 27, 2001.

In an order dated August 8, 2002, this court dismissed with prejudice Plaintiff's suit finding that Plaintiff had failed to allege with any particularity the acts by Defendants that supported her complaint of malicious prosecution despite being given an opportunity by the court to reform her complaint. The court also found that Plaintiff failed to allege that the criminal trial judge's denial of her motions for a directed verdict were procured through fraud or corruption.

II Discussion

A. Relevant Facts

Andrew and Wendy Titelman entered into a divorce decree on August 4, 2000. Under the terms of that decree, Andrew Titelman was granted sole physical and legal custody of the couple's two children and Wendy Titelman was granted limited visitation rights. In the facts relevant to the instant proceeding, Wendy Titelman was permitted to have the children from 6:00 p.m., Friday, September 1, 2000 through 6:00 p.m., Monday, September 4, 2000. As of 6:00 p.m. on September 4, 2000, the children had not been returned to Andrew Titelman. On Tuesday, September 5, 2000, Mr. Titelman contacted the Cobb County Police to request their assistance in locating the children. Mr. Titelman filed a criminal complaint with Officer Steve Kirk stating that Mrs. Titelman failed to return the children to his custody as required under the divorce decree. Mr.Titelman also filed an application for a warrant against Mrs. Titelman for interference with custody for the violation of court

ordered visitation on September 5, 2000. Magistrate Judge McLaughlin approved the application the same day. On September 8, 2000, after learning that the Titelman children were in Mississippi, Detective Craig Chandler of the Kennesaw Police Department appeared before Magistrate Judge T.O. Sturdivant and requested a warrant for Mrs. Titelman's arrest for interstate interference with custody. Judge Sturdivant signed the warrant.

As established at the underlying criminal trial, Mrs. Titelman took the children to Mississippi for the weekend. On Saturday, September 2, 2000, Mrs. Titelman had the children evaluated by a forensic psychologist in Mississippi. On Tuesday, September 5, 2000, based on that psychologist's evaluation, Mrs. Titelman went to state court in Mississippi and after an emergency hearing, the Mississippi state court judge entered an ex parte order placing the children in the custody of the Harrison County (Mississippi) Family Court shelter until a hearing could be held and granting Mrs. Titelman visitation to the children while they were in the shelter.

After further proceedings, the children were eventually returned to Georgia. Judge James Bodiford in Georgia ordered that the children be returned to the full custody of Mr. Titelman on September 20, 2000, where they have since remained.

On April 23, 2001, the state's case against Mrs. Titelman proceeded to trial. Mrs. Titelman was charged with interstate interference with custody on Monday, September 4, 2000 in violation of O.C.G.A. § 16-5-45(c)(1). During the jury charge, Judge Robert E. Flournoy, III, the presiding judge of Mrs. Titelman's criminal trial, stated: "A person commits the offense of interstate interference with custody when, without lawful authority to do so, the person knowingly takes any minor person away from the individual who has lawful custody of such minor person and in doing so, removes such minor person from this state." Criminal Transcript, at 876. After the presentation of the state's evidence, Mrs. Titelman moved for a directed verdict. Mrs. Titelman asserted several grounds for her motion: (1) the indictment alleged the wrong section of the criminal

statute, and (2) she was justified in her actions even if she made a mistake of fact. Mrs. Titelman argued that the state had charged Mrs. Titelman under the wrong criminal statute because she had permission to take the children from Georgia. The state argued that the improper "taking" occurred on Monday. September 4, 2000, in Mississippi when Mrs. Titelman failed to return the children to the custody of Mr. Titelman as set forth in the divorce decree. The court denied Mrs. Titelman's motion on both grounds. After Mrs. Titelman presented her evidence, her attorney renewed a motion for a directed verdict on the same grounds as raised before. The court again denied her motion. *Cf. Griffin v Georgia Power Co.*, 186 Ga. App. 565 (1988) (applying *Monroe* and holding that denial of motion for directed verdict after state's evidence was binding determination that probable cause existed and precluded malicious prosecution claim despite fact that judge granted renewed motion for acquittal after defense presented evidence).

The gravamen of Mrs. Titelman's malicious prosecution

complaint in the instant case is that her prosecution was initiated and maintained without probable cause. *See* Amended Cmplt., ¶ 10. As the court explained in its previous order, however, *Monroe v. Sigler*, 256 Ga. 759 (1987), stands for the proposition that the denial of a motion for a directed verdict after the presentation of the state's evidence is a binding determination that probable cause exists and thereby precludes a malicious prosecution claim. *See also Wingster v. Huntley's Jiffy Stores, Inc.*, 200 Ga. App. 252, 252 (1991) (Holding that *Monroe* established a "mandatory inference to be drawn under the circumstances"). Thus, as the court explained to Mrs. Titelman's counsel during the October 18, 2001 hearing, the only question remaining was whether Judge Flournoy's ruling denying Mrs. Titelman's motion for directed verdict was procured through fraud or corruption.

Despite being given the opportunity to amend her complaint, Mrs. Titelman never came forward with any allegation that would support a claim that Judge Flournoy's rulings were a product of fraud

or corruption. The only indication from Mrs. Titelman that this court has of a misstatement or suppression is that when she left the state of Georgia, she was authorized to do so under the divorce decree. As Mrs. Titelman, herself, alleges, however, "[t]his fact was known at all times by these defendants." Amended Cmplt., ¶ 10. In paragraph 11 of her Amended Complaint, Mrs. Titelman also discusses her justification defense. Thus, the only other fact that she alleges could have been known and suppressed by Defendants was whether she was acting with or without an arguable justification. Notably, however, both of these facts were known by Judge Flournoy at the time he denied Mrs. Titelman's motion for directed verdict, and therefore his ruling could not have been procured by fraud or corruption. Mrs. Titelman's counsel argued to Judge Flournoy that the indictment was flawed because Mrs. Titelman was authorized to leave the state of Georgia with the children. Her criminal counsel also spent considerable time during opening argument and in cross-examining the state's witnesses on laying the foundation for her

justification defense. Accordingly, no material fact was suppressed or misstated to Judge Flournoy that would lead this court to understand that his denial of Mrs. Titelman's motion for a directed verdict was the product of fraud or corruption.

A review of the allegations made against each Defendant does not counsel a different result. In her Amended Complaint, Mrs. Titelman also asserted:

In addition to the facts set forth above, all defendants directly and jointly aided, counseled, and abetted the malicious prosecution of Plaintiff by intentionally:

A. Failing to disclose all material facts to the District Attorney (refers to entire District Attorney's Office) and/or the police or Grand Jury.
B. Providing knowingly false material information to the police and/or the District Attorney.
C. Defendants Woods and Titelman provided knowingly false and/or incomplete material information to the criminal court jury and encouraging other witnesses to do so.
D. Pressuring the District Attorney to prosecute the Plaintiff.
E. Continuing to participate and assist in the criminal prosecution after Plaintiff rejected the District Attorney's plea offer, knowing that conviction was

impossible and probable cause never existed.

F. Assisting the District Attorney in strategy and trial preparation.

G. Intentionally providing knowingly false material information to the FBI and the U.S. Attorney to procure the arrest of Plaintiff for a federal felony of Unauthorized Flight to Avoid Prosecution.

H. Providing knowingly false or incomplete material information to other witnesses in the criminal trial to obtain the testimony of those witnesses against Plaintiff.

I. Encouraging the District Attorney to attempt to pressure Plaintiff's witnesses to abandon Plaintiff's criminal defense.

J. Procuring the concealment from Plaintiff [of] material evidence proving the sexual abuse of the children and the gross negligence of Woods and King.

K. Other acts to be ascertained in discovery.

Amended Complaint, ¶ 15. In subpart A, Mrs. Titelman alleges that not all material facts were presented to the district attorney, police, or grand jury. But this is irrelevant to the determination of whether Judge Flournoy's ruling was procured through fraud or corruption. Furthermore, other than the two facts noted above, Mrs. Titelman has not asserted any other fact that is alleged to be material that was suppressed by Defendants or that was misrepresented to the Judge